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File No. O. Electricity/52 (S.P)

Legal Deptt.

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Subject:—Opinions under the Bombay Electricity (Special Powers) Act 1946

Enclosure.

C O N T E N T S

Legal Department File No.O.Electricity (S.P.)/1952.

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10668. of 30-5-1952.

Submitted with reference to P.W.D. note at pp. 49-50 ante. It appears that the proprietor of the Karnodaya Litho Printing Press (Shri M.C.Gandhi) forwhich electire power was sanctioned under meter No.A.75103 sold a printing press in the compound of the Victoria Mills, Gamdevi, to one Shri M.S.Shah, Director of the National Printers Ltd.Since the transfer , the National Printers Ltd. have been using electricity for running the business through meter No.A-75103. The National Printers Ltd., therefore applied for transfer of the meter. That company said that since June 1949 it has been making payments on account of consumption of electricity to the Karnodaya Litho Press. The P.W.D. forwarded the application of the National Printers Ltd. to the General Manager of the B.E.S.T. Undertaking directing that a load of 11.9 K.W. should be transferred to the National Printers Ltd. The Solicitors of Shri M.C.Shah have now protested against the order of transfer of the load. The P.W.D.now feels that under the Bombay electicity (Special Powers) Act,1946 (Bom XX of 1946) Government has power to direct the disconnection of supply for misuse but have no power to order the transfer of supply form one consumer to another.That department further considers that inasmuch as Shri Gandhi in whose name meter No.A.75103 stands allowed the National Printers Ltd., to use electricity there has been amisuse of it for which Government could order disconnection. Since Government has, however, ordered the transfer of the supply the R.L.A. is requested toadvise whether the supply can now be frozen and sanctioned as a new load in favor of Messrs.National Printers Ltd.

2. Section 6A(a) of the Bombay Electricity (special powers)Act,1946, empowers the State Govern-

Government to make an order for prohibiting or regulating the distribution or supply of electrical energy by a licensee or use of such energy by a consumer for any of the purposes specified in the order. Section 6B(b) provides that if any undertaking contravenes an order made under section 6A the State Government may by order direct the licensee to discontinue the supply. The order issued under section 6(1)(a) provides as follows:-

> "(1) no transfer of power by sale, hire or otherwise should be allowed without the permission of Government,
>
> (2) An change in the purpose for which the power was sanctioned should be allowed without the permission of Government,
>
> (3) no use of power beyond the restricted period of sanction of permits should be allowed in any case."

In order that Government can direct discontinuance of supply there must be a contravention of an order under section 6A by an undertaking. It may be argued that the Ararnodays Press in this case transferred the power to National Printers Ltd., without the permission of Government against the direction in clause (1) of the Order. But this protion of the order does not appear to be valid so far as consumers are concerned. In the first place the order is in the form of a letter addressed to distributing licencees. It does not appear to have been published in the Gazettes. The consumers cannot, therefore, be deemed to have notice of it. Secondly, under section 6A(a) order can be made in espect of consumers only for prohibiting or regulating the use of energy for any purposes specified in the order. The order does not mention any such pruposes, it does not, therefore, appear that the Narnodays itho Printing Press can be deemed to havd contravened any provision of the

Office of the R.E.A.

Section 6A(1) of the Bombay Electricity (Special Powers)Act, 1946, provides that, notwithstanding anything contained in any law for the time being in force, or any permission granted under sub-section (3) of section 5 or any instrument having effect by virtue of any law, the State Government may, with a view to controlling distribution, supply, consumption or use of electrical energy make an order -

(a) for prohibiting or regulating, subject to such conditions as it may specify in the order, the distribution or supply of electrical energy by a licensee or use of such energy by a consumer for any pruposes specified in such order;

(b) for determining the priority, etc.

Section 6B provides:

"Nothwithstanding anything contained in the Indian Electricity Act,1910, or the terms of any licence or sanction granted thereunder or an agreement for the supply of electrical energy -

(a) if a licensee contravenes an order made under section 6A, it shall be lawful for the State Government to revoke the licence or sanction granted to such licensee for the supply of electrical energy; or

(b) if any undertaking contravenes an order made under section 6A, the State Government may by order direct the licensee to discontinue or reduce the supply of electrical energy made to such undertaking and the licensee shall thereupon discontinue or reduce the supply of electrical energy to such undertaking."

Reading these provisions together it appears that under sub-section (1)(a) of section 6A two kinds of orders are contemplated: (1) directed to the licensee and (2) directed to the consumer, the penalty to be imposed on the licensee for the contravention of the order is the revocation of the licence while the penalty to be imposed on the consumer for contravention of the order is the disconnection or reduction of the supply of electrical energy to such consumer. The orderNo.1932/36-E1(II)(3), dated the 28th April 1950, passed by Government in exercise of the powers conferred by sub-section (1) (a) and (2) of section 6A provides.

(1) No transfer of power by sale, hire or otherwise should be allowed without the permission of Government.

(2) no change in the purpose for which the power was sanctioned should be allowed without the permission of Government.

(3) no use of power beyond the restricted period of sanction ofpermits should be a allowed in any case.

And further the licensee are authorised to disconnect the supply of power in any case which involves the violation of any of the conditions specified above. The frame of this order clearly indi-cates that it could have been directed not only to the licensees but also to the consumer to prevent transfer of power by sale, hire or otherwise without the permission of Government. If the order had been so directed, there would have been difficulty at all of taking action under clause (b) of section 6B against the Karnodaya Litho Printing Press for transferring to the National Printers Ltd. The supply of electrical energy without the permission of Government and ordering the disconnection of supply. But unfortunately, the order was actually addressed only to the licensees and not to the consumers. Besides, it is understood that the order has not been published in the Bombay Government Gazette or in any other manner, so as to inform consumers about it. If so, the consumers could not be fixed with the knowledge of the order and consequently no action could be taken for penalising them. So far back as in 1949 the Karnodaya Litho Printing Press sold its printing press to the National Printers Ltd., and since then the latter has been using electrical energy. Consequently, if any transfer of electrical energy has taken place, it must have been so donein 1949 and since then the National Printers Ltd. Have been using the electrical energy. The transfer having taken place without the permission of Government , if at all any penalty is to be imposed it would be on the licensee. Besides, the Karnodaya Litho Printing Press has been contending that there

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has been no transfer of electrical energy. As in the books of the B.E.S.T. the installation still stands in the name of the Karnodaya Litho Printing Press, the disconnection of supply would act as a penalty to the consumer which penalty could not be imposed under section 6B unless the order is directed to the consumer himself. As stated above, the order in the present case is not directed to the consumer. In these circumstances, no action for disconnecting the supply would appear to be legally feasible.

2. Government has no power to order the transfer of supply from one consumer to another, and, therefore, the order passed by Government directing that a load of 12.9 K.W. should be transferred from the Karnodaya Litho printing Press to the National Printers Ltd. will have to be cancelled.

Sd/ P.K.Lad.

Remembrancer of Legal Affairs.

U.O. to H.U.D.No.11080,dated th 4th July 1952.

EKH.16/6/

L.D.R.I.No.21,001,dt. 8-9-52.

Submitted.

Messrs.Metals Limited were receiving supply of electricity since 1946 from Shri Dehgamwalla who was also there ladlord, In March 1951, it appears, the landlord, Shri Dehgamawalla cut off the power supply whereupon the company proceeded against him in a court of law. In these proceedings Shri Dehgamwalla agreed by his letter dated 20-9-1951 addressed to the B.E.S.T. Undertaking to allow the company to have the electric supply from his sanctioned quota provided the P.W.D. agreed. An application was thereafter made to Government byM/s.Metals Ltd.and Govt.by its letter No.N.S./121/ 36100-L, dated the 22nd April 1952 sanctioned transfer of 10 H.P.load from the name of Shri. A.A.Dehgamwalla and another to the name of the company. Shri Dehgamwalla has protested against these orders. It is contended by him that it was never agreed to transfer the load, and that even if there was an agreement fortransfer the obligation should be deemed to be disolved in view of the electricity cut. It is also contended that the tenancy of M/s.Metals Ltd. has been terminated and in the circumstances the transfer should not be effected. P.W.D. considers that Shri Dehgamwalla is bound to supply the electric power to M/s.Metal Ltd. and that he is trying to back out of his obligation though the transfer is permitted by Govt. it is, therefore, proposed either -

(a) to issue a legal order under sec.6A of the Bombay Electricity (Special Powers)Act,1946 freeing the 10 H.P.lad from Shri Dehgamwalla and releasing the same to Messrs. Metals Ltd. by a separate sanction, or

(b) to inform M/s.Metals Ltd. that Govt.having permitted the transfer, it is for them to adopt such measures in a court of law as they may deem necessary

to compel Shri Dehgamwalla to allow them to use the power. In view of R.L.A's opinion No.11080, dated 4-7-1952 R.L.A. is, however, requested to advise taking into consideration A on p. 78 ante and the consent on p.55 ante.

2. In his opinion No.11080, dated the 4th July 1952, the R.L.A. has held that Govt.has no power to order the transfer of supply from one consumer to another and, therefore, the order passed by Govt. directing transfer will have to be cancelled. In the present case, it is true that Shri Dehgamwalla had agreed to the transfer of supply and on the basis of that consent the Govt. letter at p.61 ante was issued. On the strength of that letter, it would be possible for M/s. Metals Ltd. to obtain the supply in their own name; but if Shri Dehgamwalla refuses to transfer, it would be for M/s. Metals Ltd. to obtain the necessary relief from a court of law relying on the terms and conditions of their tenancy and Government's permission since Govt. cannot itself order such transfer.

R.LA. Sd/ P.M.Lad.

U.M. to P.W.D.No.17671/A, dated 24th Oct. 1952.

EKN.16/6/

Office of the R.L.A.

In his opinion No.11000, dated the 4th July 1952, the Remembrancer of Legal Affairs has held that Government has no power to order the transfer of supply from one consumer to another and, therefore, the order passed by Government directing transfer will have to be cancelled. In the present case, it is true that Shri Deganawalla had agreed to the transfer of supply and on the basis of that consent the Government letter at page 61 ante was issued. On the strength of that letter, it would be possible for Messrs.Matale Ltd. to obtain the supply in their own name; but if Shri Deheanawalla refuses to transfer, it would be for Messrs.Matale Ltd. to obtain the necessary relief from a court of law relying on the terms and conditions of their tenancy and Government's permission since Government cannot itself order such transfer.

Sd/ P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.17071/dated the 24th October 1952.

EHK.18/6/

Submitted.

M/s. Karfule Ltd. had an authorised connected load of 57.7.H.P. standing in their name at Reay Road. They exceeded this load unauthorisedly to 69.5 Kw. and distributed it as follows:-

(1) M/s.Karfule Ltd. 47-H.P.

This load is entirely idle.

(2) M/S.Efficiency Equipments 7-5 H.P.

(3) M/s. Bharat Steel Belt. 15.H.P.

2. The B.E.S.T. detected the unauthorised exensions and disconnected the entire load. The supply was reconnected after M/s. Karfule adjusted the load to 57.7 Kw. their authorised load. However, supply to the electric installation owned by M/s. Bharat Steel Belt was totally disconnected as M/s. Karfule Ltd. wanted to bring the load ~~think~~ to theauthorised load.

3. M/s. Bharat Steel Belt approached Govt. for restoration of the load which they were using. They had also filed a suit against M/s.Karfule Ltd. in the Court of Small Causes, Bombay and under a decree dated 31-7-52, Court has decided that M/s.Bharat Steel Belt the use of 15 H.P. In view of the Court's decision Govt. informed M/s.Bharat Steel Belt that Govt. has no objectio to transfer part of Shri Karfule's load to their name.

In order to get the supply connected to M/s.Bharat Steel Belt Lacing Works, the landlord's (M/s. Karfule Ltd), consent is required authorising the B.E. S.T. U. to lay necessary service line in the property of the landlord, in the position stated by the B.E.S.T. U and further making the landlord agreeable to keep the service position open and accessible for tapping and inspection. From the Bharat Steel Belt's letter at.p.

73-74 it appears that the landlord (M/s.Karfule Ltd) is not willing to give the consent letter required by the BESTM and that M/s. Karfule Ltd. have not yet acted upon the Court's directive torestore supply to M/s. Bharat Steel Belt who have therefore filed fresh applns. in the Police Court, Mazagaon, and the Small Causes Court, for taking action against M/s. Karfule Ltd. Both these applons. are pending in the courts. In view of these difficulties M/s. Bharat Steel Belt request Govt. to act on the decision of the Court and reduce the load of M/s.Erfule Ltd. by 15 H.P. and allot to them. The R.L.A. is requested to advise whether Vot. is competent to do this, by serving an order under the powers conferred by sec.6A(1) of the Bombay Ely.(Special Powers)Act,1946, on the basis of the Court's decision.

Attention is invited to R.L.A's opinion No.11080 dated the 4th May 1952, wherein R.L.A. has opined that Govt. has no power to order the transfer of supply from one concern to another. In the present case therefore, it will not be legally feasible for Govt. to issue an order under sec.6A(1) of the Bombay Electrical (Special Powers) Act, 1946, for discontinuing a part of the supply to M/s.Karfule Ltd. and pass it on to M/s. Bharat Steel Belt Lacing Works.

I agree however D.S.(Civil) may please see

Sd/

D.S.(Civil)Reply may be as at B

Sd/ R.T.K

R.L.A. Sd/ P.M.Lad.

U.R. to P.W.D. No.18370/E, dated the 5th November 1952. EKN.16/6/

Office of the R.L.A.

Attention is invited to R.L.A's opinion No.11080, dated the 4th May 1952, wherein the Remembrancer of Legal Affairs has opined that Government has no power in order the transfer of supply from the concern to another. In the present case therefore, it will not be legally feasible for Government to issue an order under section 6A(1) of the Bombay Electrical (Special Powers)Act,1946, for discontinuing a part of the supply to Messrs.Narfule Ltd. and pass it on to Messrs.Bharat Steel Melting Works.

Sd/ P.N.Lad.

Remembrancer of Legal Affairs.

U.R. to E.W.D.No. 18370/E, dated the 8th November 1952.

EKN.66/6/